



In The
SUPREME COURT OF THE UNITED STATES

No. 77-584

UNITED STATES OF AMERICA

vs.

DAVID NEUSTEIN

DAVID NEUSTEIN,
Petitioner

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

HAROLD GONDELMAN
BASKIN, BOREMAN, WILNER,
SACHS, GONDELMAN & CRAIG

Attorneys for Peitioner

10th Floor, Frick Building
Pittsburgh, Pa. 15219

INDEX

	Page
Opinions Below.....	2
Jurisdiction.....	2
Question Presented.....	2
Constitutional Provision Involved.....	3
Statement.....	3
Reasons for Granting the Writ.....	4
Conclusion.....	10
Appendix A - Judgment Order.....	1a
Appendix B - Sur Petition for Rehearing.....	3a
Appendix C - Opinion and Order.....	5a
Appendix D - Affidavit in Support of Motion for New Trial.....	8a

CITATIONS

Cases

Coles v. Peyton, 389 F.2d 224 (C.A. 4, 1968).....	9
McQueen v. Swensen, 21 CrLRptr. 2528 (C.A. 8, decided August 23, 1977).....	9
Moore v. United States, 432 F.2d 730 (C.A. 3, 1970).....	7,8,9

Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55 (1932).....	5,8,9
United States v. DeCoster, 487 F.2d 1197 (C.A.D.C. 1973) (DeCoster I).....	7,8
United States ex rel. Williams v. Twomey, 510 F.2d 634 (C.A. 7, 1975).....	9
Von Moltke v. Gillies, 332 U.S. 708, 68 S. Ct. 316 (1948).....	7,8,9

Constitution

U. S. Constitution, Amend. VI.....	3
------------------------------------	---

Periodicals

58 Cornell L. Rev. 1077, at 1086.....	8
89 Harv. L. Rev. 593, at 601.....	8
"Legal Profession — Standards of Competency Required to Satisfy the Right to Effective Assis- tance of Counsel", 51 Notre Dame Law. 1241	8
Bazelon, "Defective Assistance of Counsel", 42 U. Cinc. L. Rev. 1.....	8

Miscellaneous

American Bar Association, Project on Standards for Criminal Justice Relating to Prosecution Func- tion and Defense Function.....	5,6
--	-----

In The SUPREME COURT OF THE UNITED STATES

No. _____

Term, 1977

UNITED STATES OF AMERICA,

vs.

DAVID NEUSTEIN

DAVID NEUSTEIN,
Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

David Neustein, petitions for a writ of certiorari to
review the judgment of the United States Court of
Appeals for the Third Circuit in this case.

Opinions Below

The judgment order of the court of appeals entered September 6, 1977 is attached hereto as Appendix A, infra (pp. 1a - 2a). The order of the court of appeals sur petition for rehearing is attached hereto as Appendix B, infra (pp. 3a - 4a). The opinion and order of the district court on defendant's motion for new trial entered February 10, 1977 is attached hereto as Appendix C, infra (pp. 5a - 7a).

Jurisdiction

The judgment of the court of appeals was entered on September 6, 1977 (App. A, infra, pp. 1a - 2a). A petition for rehearing was denied on October 3, 1977 (App. B, infra, pp. 3a - 4a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

Question Presented

1. Where the only evidence before the district court establishes as a fact that counsel for defendant did not interview a single witness nor make any investigation of the facts so as to render effective assistance of counsel to a defendant on serious criminal charges, did not the court of appeals and the district court err in failing to find that defendant was denied his Sixth Amendment rights?

Constitutional Provision Involved

The Sixth Amendment to the Consitution of the United States provides, inter alia, as follows:

"In all criminal prosecutions the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

Statement

The prosecution in this case involved a five-count indictment charging mail fraud and conspiracy to commit mail fraud. The conspiracy count sets forth nineteen (19) alleged overt acts in furtherance of the conspiracy. The indictment alleges that Neustein conspired with five unindicted co-conspirators to obtain money from insurance companies by destroying a building by arson. The indictment was returned on March 3, 1976. The beginning date of the alleged conspiracy was on or about September 1, 1970 and a superseding indictment on which the defendant was tried and convicted was filed on May 12, 1976.

The petitioner, Neustein, had successfully brought civil actions against the insurance companies for damages as a result of the same fire which was the subject of the criminal indictment and had recovered a civil judgment in the state court.

After trial, the jury returned a verdict of guilty on all five counts. Motions in arrest of judgment and for a new trial were filed by trial counsel and argument fixed on said motions. Present counsel was obtained by petitioner and after the court below refused to extend the time for argument, present counsel did not enter the case until after the motions were denied and a date fixed for sentencing. Before sentence, present counsel filed an affidavit in support of motion for new trial (App. D, infra, pp. 8a - 23a). The district court denied the motion without hearing and on February 11, 1977 fifteen (15) character witnesses appeared and testified, even after the conviction, as to the excellent reputation of the petitioner in the community. The district court sentenced petitioner-defendant to five years in prison and imposed a fine of \$14,000.00. An appeal was taken to the Court of Appeals for the Third Circuit and the matter was fixed for argument for September 6, 1977. Counsel was advised that there would be no oral argument allowed and on September 6, 1977 the judgment order, without opinion, was filed affirming the lower court. A petition for rehearing was filed and denied.

Reasons for Granting the Writ

The Sixth Amendment to the Constitution of the United States assures every defendant in the criminal case

the right to counsel. Since Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55 (1932), the constitutional right to counsel includes the right to the effective assistance of counsel.

The American Bar Association Project on Standards for Criminal Justice Relating to the Prosecution Function and Defense Function, imposes the duty on defense counsel to explore all avenues leading to facts relevant to guilt. Paragraph 4.1 encompasses the duties of defense counsel in investigating matters and provides as follows;

"4.1 Duty to investigate.

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and degree of guilt or penalty. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or his stated desire to plead guilty." (Emphasis added)

In the discussion of the investigative functions of a defense lawyer, the Standards state what should be obvious, and that is

"Facts are the basis of effective representation. Effective representation consists of much more than performing the advocate's function in the

courtroom. Adequate investigation may avoid any courtroom confrontation. As previously noted, considerable ingenuity may be required to locate persons who observed the criminal act charged or who have information concerning it. After they are located, their cooperation must be secured. It may be necessary to return to a witness several times to raise new questions in the light of facts learned from others. The resources of scientific laboratories may be required to evaluate certain kinds of evidence; analysis of fingerprints or handwriting, clothing, hair or blood samples, or ballistics tests may be necessary. Neglect of any of these steps may preclude the presentation of an effective defense" (page 226) (Emphasis added)

The Standards further state:

"The relationship of effective investigation by the lawyer to competent representation at trial is patent, for without adequate investigation he is not in a position to make the best use of such mechanisms as cross-examination or impeachment of adverse witnesses at trial or to conduct plea discussions effectively. He needs to know as much as possible about the character and background of witnesses to take advantage of impeachment . . . The effectiveness of his advocacy is not to be measured solely by what the lawyer does in the trial; without careful preparation, he cannot fulfill his role. Failure to make adequate pretrial investigation and preparation may be grounds for finding ineffective assistance of counsel. See *Shepherd v. Hunter*, 163 F.2d 872, 874 (10th Cir. 1957)." (Pages 227, 228) (Emphasis added)

Your Honorable Court has held in *Von Moltke v.*

Gillies, 332 U.S. 708, at 721, 68 S. Ct. 316, at 322 (1948), that:

"Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered."

The Court of Appeals for the District of Columbia has held in *United States v. DeCoster*, 487 F.2d 1197 (C.A.D.C. 1973) (*DeCoster I*), as follows:

"A defendant is entitled to reasonably competent assistance of an attorney acting as his diligent conscientious advocate."

In *Moore v. United States*, 432 F.2d 730 (C.A. 3, 1970), the Court of Appeals for the Third Circuit remanded the case for an evidentiary hearing on the adequacy of legal services and held that an indigent is entitled to legal services of the same level of competency as that generally afforded at the bar to fee-paying clients. The court then stated:

"In both cases, therefore, the standard of adequacy of legal services as in other professions is the exercise of the customary skill and knowledge which normally prevails at the time and place."

The affirmance of the judgment and sentence in this case allows a record to stand in which the uncontroverted status of the case is that the defendant was represented by counsel who did not comport himself with the standards prescribed by the American Bar Association or the standards prescribed by the Court of Appeals for the Third Circuit in the Moore case, or those established by the Court of Appeals for the District of Columbia in the DeCoster cases, or the standards of your Honorable Court in Powell and Von Moltke, supra.

The issue raised has caused concern in judicial circles as well as bar association meetings throughout the country. See Bazelon, "Defective Assistance of Counsel", 42 U. Cinc. L. Rev. 1; 89 Harvard Law Review 593, at 601; 58 Cornell L. Rev. 1077, at 1086; Legal Profession - Standards of Competency Required to Satisfy the Right to Effective Assistance of Counsel, 51 Notre Dame Law. 1214.

In the Harvard Law Review, supra, at page 601, the author states:

"Consequently, unless the defendant, aware of the implications of his action, has affirmatively assumed responsibility for the conduct of his defense, a conviction should be reversed if less than reasonably effective assistance was provided by either retained or appointed counsel."

The Court of Appeals for the Fourth Circuit in Coles v. Peyton, 389 F.2d 244, at 226 (C.A. 4, 1968), has mandated minimum standards of counsel in criminal cases and has held that counsel must (1) confer with the client early and as often as necessary; (2) advise him of his rights; (3) ascertain all defenses that may be available and develop all appropriate defenses; (4) conduct all necessary investigations, and (5) allow himself time for reflection and preparation. The Seventh Circuit, in United States ex rel. Williams v. Twomey, 510 F.2d 634 (C.A. 7, 1975), has issued a test of whether a defendant is deprived of legal assistance which meets a minimum standard of professional representation. See also McQueen v. Swensen, 21 CrLRptr. 2528 (C.A. 8, decided August 23, 1977).

The summary dismissal of petitioner's appeal by the Court of Appeals for the Third Circuit is in conflict with its own decision in Moore v. United States, supra, and is in conflict with the Fourth, Seventh and Eighth Circuit decisions. The affirmance is in conflict with the mandates of your Honorable Court in Von Moltke and Powell, supra.

There is a need for a national standard of minimum requirements under the Sixth Amendment to the Constitution of the United States and for a resolution of the conflicts between the circuits.

Conclusion

The courts, justices and judges have voiced opinions for the need for specialization requirements in various fields of practice. Nowhere are the rights of the citizens of the United States more affected than in the criminal courts. A case which establishes a total neglect of defense counsel in investigating or preparing for trial in a serious federal prosecution mandates that the defendant has been denied effective assistance of counsel. The fact situation in this case provides a forum for the issuance of national standards of competency required of practitioners in the criminal court system of the United States. Only this Honorable Court can mandate such minimum requirements. The petition for writ of certiorari should be granted.

Respectfully submitted,

HAROLD GONDELMAN

BASKIN, BOREMAN, WILNER,
SACHS, GONDELMAN & CRAIG

Attorneys for Petitioner.

la

APPENDIX A

Judgment Order

UNITED STATES COURT OF APPEALS
For The Third Circuit

No. 77-1283

UNITED STATES OF AMERICA

vs.

NEUSTEIN, DAVID
124 Gilda Ave., Pgh. 15217

David Neustein, Appellant

Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Drim. No. 76-48-1)

Submitted Under Third Circuit Rule 12(6)
September 6, 1977
Before: ALDISERT, ROSENN and GARTH,
Circuit Judges

2a

Appendix A - Judgment Order

JUDGMENT ORDER

After considering the contention raised by appellant, to-wit, that where it is established that privately retained defense counsel was furnished the names of potential witnesses for the defense but did not interview a single witness in preparation of the defense of the five-count indictment alleging conspiracy and mail fraud, the appellant as established a violation of his Sixth Amendment right to the effective assistance of counsel, it is

ADJUDGED AND ORDERED that the judgment of the district court be and hereby affirmed.

BY THE COURT,

R. J. ALDISERT,
Circuit Judge.

Attest:

THOMAS F. QUINN, Clerk.

Dated: September 6, 1977

3a

APPENDIX B

Sur Petition for Rehearing

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 77-1283

UNITED STATES OF AMERICA

vs.

NEUSTEIN, DAVID
124 Gilda Ave., Pgh. 15217

David Neustein, Appellant

Present: SEITZ, Chief Judge, and ALDISERT, ADAMS,
GIBBONS, ROSENN, HUNTER, WEIS and
GARTH, Circuit Judges.

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having

4a

Appendix B - Sur Petition for Rehearing

voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

ALDISERT,
Judge

Dated: October 3, 1977

5a

APPENDIX C

Opinion and Order

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	:	
	:	:	
vs.	:	:	Criminal Action
	:	:	
DAVID NEUSTEIN	:	:	No. 76-48

ORDER

AND NOW, February 10, 1977, a second and separate motion for new trial in the above captioned case, filed February 4, 1977, together with the answer of the United States Attorney, has been considered. The motion was filed by new counsel after our order of January 27, 1977 was filed, denying a motion for New Trial and fixing date for sentence. The instant motion comes long after the expiration of the limits provided by Rule 33. It appears that defendant has obtained new counsel and alleges as a ground for new trial that his original counsel was incompetent but his motion is untimely and is accordingly denied as untimely and lacking merit as well. A review of the transcript of the record demonstrates that defense counsel was competent. He is a mature attorney of considerable experience in this court. He is not required

Appendix C - Opinion and Order

to function at a degree of competence above that which is normal. Moore v. United States, 432 F.2d 730 (3d Cir. 1970).

The motion attaches an affidavit of defendant, one sentence of which refers to the court and requires some reply. The final paragraph of that affidavit states that "after conviction deponent recognized the failure of counsel to render effective assistance and requested that Harold Gondelman, Esq., be permitted to secure the transcript and file motions on his behalf, which offer was refused by the court so that deponent has also been denied effective assistance of counsel in the preparation and submission of legal points for new trial."

According to the court's recollection, after initial counsel had filed a motion for new trial and a date had been set for argument on the motion, counsel for defendant, Charles Bowers, Esq., and Harold Gondelman, Esq., came to chambers to request that Mr. Gondelman be permitted to associate with initial counsel in briefing and arguing the motion, but on condition that we extend the date for argument and briefing for some substantial time to allow for Mr. Gondelman's busy schedule since he did not desire to undertake the task unless he was afforded ample time to examine the record and engage in the research he considered necessary. He explained that he could not do

Appendix C - Opinion and Order

this within the time allowed due to the press of other commitments. The motion for new trial had been filed on September 13, 1976, and argument had been set for October 20, 1976.

No record was made of the conference and the date of the conference is not recorded. The United States Attorney did not attend the conference although counsel represented that he knew of it and had no objection to the conference.

The court did refuse to extend the date for briefing and oral argument to accommodate Mr. Gondelman's schedule, but we did not refuse to permit him to have a copy of the record or assist initial counsel, Mr. Bowers. Mr. Bowers briefed and argued his motion in due course. He was privately retained counsel and as far as we know, Mr. Gondelman was not consulted until some time after the verdict of the jury, which was returned on September 7, 1976. Further, at no time during the unreported conference did Mr. Gondelman indicate that he wanted time to prepare to argue that Mr. Bowers had been incompetent as a grounds for new trial.

/s/ BARRON P. McCUNE
BARRON P. McCUNE
UNITED STATES DISTRICT JUDGE

APPENDIX D

Affidavit in Support of Motion for New Trial

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 vs. : Criminal No. 76 48
 :
 DAVID NEUSTEIN :

AFFIDAVIT OF DAVID NEUSTEIN IN SUPPORT
OF MOTION FOR NEW TRIAL

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF ALLEGHENY : ss.

DAVID NEUSTEIN, being duly sworn according to
law, deposes and says that:

1. He is the defendant named in the above-captioned proceedings.

2. That at or about the time of the previous indictment in the above-captioned case, or shortly before, he was referred to Charles F. Bowers, Jr., Esquire, as an attorney who is knowledgeable in the criminal law. Said referral was made by Daniel M. Berger, Esquire, deponent's counsel in civil matters.

3. Daniel M. Berger had informed deponent that he would be unable to handle the criminal action against deponent as he would expect to be called as a witness in

Appendix D - Affidavit in Support of Motion for New Trial

the criminal action on behalf of deponent for the reason that Daniel M. Berger had successfully brought and tried a civil action for damages against the insurance company on the policies of insurance on the building involved in the fire alleged in the indictment and which had been defended by the insurance company on the basis that there existed a conspiracy to commit arson and allegations of fraud against your deponent.

4. Your deponent met with Charles F. Bowers, Jr., Esquire for a total of six to eight hours on four or five separate occasions prior to the commencement of the actual trial.

5. Your deponent gave to counsel a list of potential character witnesses, a copy of which is attached hereto, made part hereof and marked Exhibit "A".

6. Your deponent and counsel prepared a list to indicate the order in which character witnesses would be called at the trial, a copy of which list is attached hereto, made part hereof and marked Exhibit "B".

7. On the day before your deponent was to testify on his own behalf, your deponent was told by his counsel that character witnesses would not be called for the reason that counsel thought evidence of an alleged boat burning conspiracy would then be admissible in evidence. Deponent informed counsel that the same matter had been attempted by the insurance companies in the civil trial and that the attempt failed and deponent collected the

Appendix D - Affidavit in Support of Motion for New Trial

insurance proceeds for the fire on the basis of the jury verdict.

a). Counsel for deponent insisted that character witnesses should not be called and stated that deponent would be asked questions concerning his community activities and background in sufficient detail to alleviate the necessity of calling character witnesses. Counsel for deponent did not inquire of these matters when deponent testified on his own behalf.

b). Deponent did not agree that character witnesses should not be called, and counsel for deponent did not interview or talk to any character witnesses although furnished with the names and addresses of such witnesses and said witnesses were available for consultation, interview and conference at the convenience of counsel for deponent.

c). Deponent believes, after reading the transcript, that counsel for deponent was in error when he represented that the Court indicated that the alleged boat burning episode would be admissible for it appears that the Court, in fact, ruled to the contrary.

8. Deponent furnished counsel with the names of ten business persons with whom deponent had business dealings over a period of twenty-five or thirty years to rebut the testimony introduced by the government by alleged unindicted co-conspirators that the manner in which deponent dealt with them was in and of itself

Appendix D - Affidavit in Support of Motion for New Trial

suspicious or circumstantial evidence of guilt. Counsel for deponent did not interview nor did he secure statements from or contact in any way any of said persons.

9. Morris Berger, Esquire, an attorney of approximately fifty years in Pittsburgh and attorney for deponent for many years, together with his sons, was expected to be called as a witness to testify that deponent was compelled to file the proof of loss in the amount of \$120,000.00 in connection with the fire referred to in the indictment in order to protect deponent against any possible claim by the witness Fitchwell. To the best of deponent's knowledge, Morris Berger expected to be called as a witness and was not called by counsel for deponent, without consultation with deponent or with Morris Berger.

a). Morris Berger and Assistant District Attorney Edward E. Fagan were available as witnesses to the fact that deponent had brought charges against Fitchwell that he had been beaten by Fitchwell in Schall's presence when resisting extortion. Fagan testified at the civil trial and the testimony was then admitted to by Fitchwell and Morris Berger was counsel to deponent who took deponent to the District Attorney's office. Such testimony was crucial to the defense in light of the testimony of Fitchwell and Schall at the trial but counsel for deponent did not familiarize himself with the facts in the civil trial and did not interview or talk to witnesses who should have been interviewed and who would have had evidence of importance to the defense.

Appendix D - Affidavit in Support of Motion for New Trial

10. Deponent furnished counsel with the names of witnesses who had worked for deponent despite past criminal records for the purpose of demonstrating the efforts of deponent to assist persons who had had difficulty with the law or financial difficulty. Counsel did not interview nor contact any of such witnesses.

11. Deponent discussed with counsel for deponent approximately twenty-three community-wide activities with which he had been engaged for a period of thirty-five years, for the purpose of having such matters established at least by deponent as a witness but which counsel for deponent did not interrogate deponent about as a witness in his own behalf.

12. Deponent's wife, son and mother-in-law attended the entire trial and expressed their desire to testify for and on behalf of your deponent but counsel for deponent refused to call them as witnesses in the defense.

13. Deponent's mother-in-law, Mrs. Ethel Birnbaum, of Miami, Florida, came to Pittsburgh for the trial and deponent was in her apartment the day notice of the fire was received by deponent. Counsel for deponent did not interview Mrs. Birnbaum concerning the facts to which she could have testified in deponent's behalf.

14. On Friday morning, the date deponent was to testify, he informed his counsel about the apparent discrepancies in the claims of government witnesses as to a single delivery of plastics when, at the civil trial, it had

Appendix D - Affidavit in Support of Motion for New Trial

been established there were two deliveries and deponent had so testified. Counsel for deponent expressed surprise that the civil trial contained such testimony and deponent realized at that point that counsel was totally unprepared on the facts of the case.

15. Deponent testified as to two checks made to equipment supply houses being in his own handwriting. It was only on the morning of his testimony that counsel for deponent inquired as to whose handwriting said checks were in and expressed surprise that deponent was willing to identify checks as being in his own handwriting.

16. Counsel for deponent made no investigation concerning deliveries of materials, payments for the same nor did he interrogate, himself or by an investigator, any witness who had material information or might have disclosed material information establishing the defense on behalf of deponent.

17. At the time of counsel for deponent being retained by deponent, it was stated that the fee included up to \$1,000.00 for investigation which, to the knowledge of your dponent, was not done in any manner by anyone, including counsel for deponent.

18. Jerome Wojcicki, an official of Equibank, Washington Trust Office, had testified on behalf of deponent at the civil trial against the insurance companies. Counsel for deponent did not meet with nor attempt to meet with nor have a conference with said witness prior

Appendix D - Affidavit in Support of Motion for New Trial

to the trial, despite deponent's disclosure of his name and his participation in the loan arrangements and discussions at Equibank.

a). It was not until after the witness had testified that the deponent was informed by his counsel that he had the witness' grand jury testimony and knew what the witness would testify to at the trial. Counsel had not discussed such testimony with deponent.

b). Had counsel reviewed these matters with deponent, deponent could have, together with Daniel M. Berger, Esquire, clarified the testimony of Wojcicki at the civil trial and conferred with Wojcicki and other officials at Equibank to refresh the memory of the witness as he had testified to previously and thus ferret out the truth.

c). The only preparations the witness Wojcicki evidently had was observed by deponent when the Postal Inspectors and government personnel were discussing the case with Wojcicki in the corridors of the courthouse prior to this testimony.

19. During the lunch recess on the day deponent testified, counsel for deponent cautioned deponent to continue to answer government prosecutors' questions as he had them without being argumentative and counsel for deponent would, on re-direct, clear up any ambiguities which might have resulted from deponent's inability to answer questions fully by reason of government prosecutors' cross-examination. Despite such assurance, counsel

Appendix D - Affidavit in Support of Motion for New Trial

for deponent asked no questions on re-direct.

20. The closing argument of counsel for deponent referred to deponent as

"So the man is there to make a fast buck and he's not going to ask too many questions about the other people who come to him in a transaction. Okay, granted. It's not very laudable perhaps but it doesn't make him guilty of the crime charged because he was greedy . . .".
(Tr. p. 480)

21. Although counsel for deponent, in refusing to call character witnesses and in refusing to call other witnesses for deponent, attempted to placate deponent by stating that he would cover these matters in his close to the jury, the close to the jury, an attack upon deponent, readily evidences the ineffectiveness of assistance of counsel.

22. After conviction, deponent recognized the failure of counsel to render effective assistance and requested that Harold Gondelman, Esquire be permitted to secure the transcript and file motions on his behalf, which offer was refused by the Court so that deponent has also

Appendix D - Affidavit in Support of Motion for New Trial

been denied effective assistance of counsel in the preparation and submission of legal points for new trial.

DAVID NEUSTEIN
DAVID N. NEUSTEIN

SWORN TO AND SUBSCRIBED
before me the 4 day of
February, 1977.

Alyce V. Goff
Notary Public

to Florida Thursday 2/18/71
Israel Bond Luncheon Friday 3/5/71
Israel Bond Dinner Sunday 3/7/71
Gilda Birthday Monday 3/8/71
fire night of 3/8/71
return home morning Tuesday 3/9/71

Edith Apter Manager apartment house 45 years
700 Forbes Ave.. 821-4323 391/0912

M. Michael Allon owner Treasure Island 50 years
1896 Brushcliff Rd. 15221 371-4323

Marcella Allon housewife - Community Leader 25 years
1896 Brushcliff Rd, 15221 371-4323

Stanford (Pabo) Aronson Partner in Honda Business
3230 Valwood Dr. Munhall 15120 462-9046 (923-2866)

Phil Minkin Attorney - community leader
115 Hartwood Dr 362-5888 242-5089 (562-8635)

Albert Bloom Editor Jewish Chronicle 18 Years
3242 Beechwood Blvd 15217 421-2724 (687-1000)

Dave Bregman Westinghouse - Scout Leader 15 years
5929 Nicholson St 15217 256-2463 521--3362
256-2157

Kitty Breskin Housewife 45 years
6630 Northumberland St 15217 421-4310

Harry Caplan Attorney
5847 Beacon St 15217 421-6730 (261-0784)

Judge William Cercone 12 years
581 130 Derwent St Ross Twp 15237 364-0983 (261-789)

Robert Chomovitz 10 years
10 BERTLEH ST 422-8 236 (off. 421-7654)

EXHIBIT "A"

BEST COPY AVAILABLE

Richard Cohen Ex.-Dir. Squirrel Hill Coalition 10years
office 2012 Murray Ave 15217 (422-7666)

OK Al Cousins Morale Corp owner 18 years
1215 Beechwood Blvd 15217 362-8330 (361-6673)

Nick Di Battista contractor 824-5102
199 Sunset Dr. 15235

OK Irving Elbling Westinghouse-Community leader 23 years
1437 Severn St. 15217 421-9071
256-3574 256-7165

Herman Engelberg realtor -community leader 50 years
1229 Beechwood Blvd 15217- 361-6250 (687-7628)

Elliot Falk Controller Robert Morris College -neighbor
223 Anita Ave 15217 521-9088

Herman Fineberg (61-7001) Iron City Uniform-Neighbor 50years
Kenmar Apts. 15217 661-0494 (621-2001)

Sidney Fineberg Salesman 40years
6417 Monitor St. 15217 521-6129

Leonard Fischler Oliver Dress Shops-former neighbor 10years
4742 Center Ave. 15217 621-0982 (281-4951)

Norton Freedel Insurance Agent -neighbor
232 Anita Ave. 15217 521-7776 (281-4228)

Leslie Friss Jewish War Veterans-cousin 18years
2112 Nightman Ave. 15217 421-3779

Donna Gold (Donna Gold) Real Estate 45years
150 Westland Dr. 15217 421-4136 (621-0384)

Oscar Goldberg Pharmacist 15years
5918 Beacon St. 15217 41-3161 (861-4333)

Rabbi Moshe V. Goldblum 15 years
6403 Beacon St. 15217 421-4508 (421-2288)

Edward Goldston Real Estate Appraiser 12 years
5637 Northumberland St. 15217 422-9933 (281-5779)

Linda Goldston Attorney 8 years
5637 Northumberland St. 15217 422-9933 (562-8635)

✓ Sidney Greenberger IRS -neighbor 20years
2825 Fernwald Rd. 15217 421-2123

Myron Horowitz Plumber 30years
222 Colbart Sq 621-0584

Isadore Horne American Mirror & Glass - Community leader
1151 Brintell St. 15201 781-8288 (242-7580)

Bernice Katz Jeweler - neighbor 18 years
227 Anita Ave. 15217 521-7120 (471-3030)

Doris Kalbach bookkeeper-employee 5 years
205 Chaplin Dr. Corcoran 264-5644 (983-2866)

Dave Kanichu Mechanic -employee (923-2866)
% Mon Tly. Cy-e

✓ Chester Keith Bank Vice-president 20 years
108 Eastgate Rd. 15221 443-6259

Don Landis Epic Corp 20years
1323 Brinton Rd 243-3077

Saul Langsner Salesman 50years
14 Fairfield Ct 361-7160

Saul Loff BL Cream - Alber Loff 50years
5825 Fifth Ave 363-4231 (441-7700)

Bill Lucas AAA Trans 10 years
3244 May St. 15228 (462-5040)

Bill Lucas Jr (Busch) Mechanic - employee (923-2866)
% Mon Tly. Cy-e

20a

Arthur Maharam Scientist 27 years
6708 Wilkens Ave. 15217 422-0475

Morton Markowitz Engineer 18 years
2789 Beechwood Blvd 15217 521-0506 (682-2893)

Mildred Monlowe Dir. Women's Div Israel Bonds 12 years
151 N. Craig St - 683-0305 (471-7929)

Albert Myers Electrician 15 years
851 8 St Verona 828-7174 (661-8800)

Jack Meyers Meyers Plumbing 15 years
(471-0772)

Norris Pearl Retired 40 years
5620 Hobart St 15217 421-5818

Tom Quinn Union Business Agent 33 years
4501 15th St 15176 372-7655

Stanley Rosecrans Westinghouse 48 years
6632 Rosemoor St. 15217 421-5408

Herbert Schnabes Salesman 15 years
5421 Beacon St 15217 521-8626

Harvey Schwartz Ex. Dir. Jewish Natl Fund 13 years
3075 Beechwood Blvd 15217 521-1890 (521-6866)

Albert Shapira Attorney - neighbor 42 years
214 Anita Ave. 15217 421-9208 (601-1505)

Joe Skaro Contractor 18-20 years
720 Wood St 371-1805

Rabbi Morris Sklar 12 years
2331 Tilbury St. 15217 421-9657 (421-2288)

21a

Nate Smith

355 6355 office 8 years

Albert Smolover

Ins. Agent - Community leader 20 years

5625 Marlboro Rd. 15217

521-6794

L. Stienor (Hank) Spear

Heating- Air Cond. Centr

10 years

2309 Main St

461-5531

Ed Stienfeld

Ex. Dir. Histadrut

40 years

4741 Coleridge St.

362-1667 (421-4434)

Judge Silvestri Silvestri

1173 Beechwood Blvd 15217

661-1455

Cantor Moshe Taub

10 years

6511 Bartlett St. 15217

421-5924 (421-2288)

Mel Taylor

Public Relations

25 years

6352 Douglas St 15217

422-9267

Dr Burton Tucker

Dentist

20 years

1489 Laurel Dr. 15235

823-3844 (423-42-7990)

Sam Verman

Developer -retired

25 years

2211 Beechwood Blvd 15217

421-4745

Harry Wagner

Insurance Agent - Community leader 40 years

401 Shady Ave

362-4114 (281-4228)

Dr Cyril Wecht

10 years

5420 Darlington Rd 15217

521-2881 (281-9090) (621-8866)

Mathew Weisberg

Merchant

10 years

16 Darlington Ct 15217

521-6257 (321-7616)

Shirley Wildon Housewife

40 years

5831 Darlington Ave 15217

421-3284

Character Witnesses to have been called

Name	Address	Position	Rel. #
Nate Smith	7140 McPherson Blvd	State Command	(8) 355-635
Thomas Quinn	4002 Beryl Lane	Business	(33) 372-765
Dave Bryman	5929 Nicholson - 15017	Accountant	(15) 521-336
Albert Cousins	1215 Beechard Blvd	Business	(18) 362-832
Ruth Splan	2331 Fillingst	Public	(12) 411-965
Albert Smolow	5025 Marshall St	Insurance Agent	(20) 521-679
Melvin Taylor	6355 Douglas St	Public	(25) 422-42
Herman Finberg	Kennedy Apt	Public	(40) 661-247
Lonnie Horne	1151 Brattle	American	(17) 442-752

This is the list and order of calling of character witnesses selected by Atty. Bowers from the larger list submitted. They were notified on Thursday night by letter not to come the next day.

A larger number than the above were also willing to be called in as character witnesses.

CERTIFICATE OF SERVICE

Service of a true and correct copy of the within Affidavit of David Neustein in Support of Motion for New Trial made on Carl LoPresti, Esquire, c/o the Office of the United States Attorney, 633 U. S. Post Office and Courthouse, Pittsburgh, Pennsylvania 15219, and on Charles F. Bowers, Jr., Esquire, 826 Merchant Street, Ambridge, Pennsylvania 15003, the 4th day of February, 1977, via U. S. mail, postage prepaid.

Harold Gondelman

Attorney for David Neustein